

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

BKY No. 09-50779

Dennis E. Hecker,

Chapter 7

Debtor.

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**NOTICE OF HEARING AND EXPEDITED MOTION FOR AN ORDER  
AUTHORIZING SALE OF ASSETS FREE AND CLEAR OF LIENS**

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To: Parties specified in Local Rule 9013-3.

1. Randall L. Seaver, the duly-appointed Chapter 7 Trustee in the above-referenced bankruptcy case ("**Trustee**"), moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at 2:30 p.m. on August 26, 2009 Courtroom No. 8 West, U.S. Bankruptcy Court, 300 South Fourth Street, Minneapolis, MN 55415 or as soon thereafter as counsel can be heard.

3. As this Motion is brought on an expedited basis, any response to this Motion must be filed and served by delivery as soon as possible and suggestion is made that a response should be filed at least twenty-four (24) hours prior to the hearing. **UNLESS A RESPONSE IS TIMELY SERVED AND FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Rule 5005 of the Federal Rules of Bankruptcy Procedure ("**Bankruptcy Rules**"), and Local Rules 1070-1 and 1073-1. This is a core proceeding. This case was commenced as a voluntary Chapter 7 proceeding on June 4, 2009. The case is now pending before this Court.

5. This Motion arises under 11 U.S.C. §363(b)(f) and (m) and Bankruptcy Rule 6004. The Trustee seeks to sell Todd A. Montpetit ("**Buyer**") Debtor's interest in ITR Group, Inc. ("**Company**"), including all shares of Company stock which Debtor may own and all rights under that certain Stock Purchase Agreement dated March 1, 2004 between Debtor and Buyer (the "**Stock Purchase Agreement**") for the sum of \$40,000.00 (such interests and rights are referred to herein collectively as the "**Debtor's ITRG Rights**").

6. The sale will be free and clear of the interests of any parties. The net proceeds of the sale would be subject to any secured party's interests and would be held in the Trustee's trust account subject to further order of the Court.

7. The Trustee has investigated the financial affairs of ITRG and believes, given said review, that the sum of \$40,000.00 for the Debtor's ITRG Rights is a fair purchase price. Upon information and belief, the Company's assessed value is roughly equivalent to its secured debt and any ITRG shares which Debtor may own would constitute a 50% stake in ITRG.

8. The Trustee believes that there are three possible creditors which may claim security interests in the interest being sold pursuant to this Motion. The first is Cornerstone Bank that has a UCC-1 filed on January 1, 2009 covering among other things, general intangibles. The second is Chrysler Financial which filed a UCC financing statement on January 28, 2009 covering among other things, contract rights, documents, instruments, investment property and general intangibles. The third is Toyota Motor Credit with a UCC filing dated April 7, 2009 covering among other things instruments, securities, documents, contract rights, general intangibles and investment property.

9. The definition of "general intangibles" specifically excludes "investment property" (see Minn. Stat. §336.9-102(42)). Investment property includes certificated and non- certificated

securities or securities entitlement. (See Minn. Stat. §336.9-102(49). The definition of securities and securities entitlement comes from Article 8.

- a. (15) "Security," except as otherwise provided in section 336.8-103, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer:
  - (i) which is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;
  - (ii) which is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and
  - (iii) which:
    - (A) is, or is of a type, dealt in or traded on securities exchanges or securities markets; or
    - (B) is a medium for investment and by its terms expressly provides that it is a security governed by this article.
- (16) "Security certificate" means a certificate representing a security.
- (18) "Uncertificated security" means a security that is not represented by a certificate.

10. It may be that Debtor was never actually a shareholder in ITRG because a stock certificate was never issued in the Debtor's name for any ITRG shares and because his ownership of ITRG shares was never registered on the stock records of ITRG. *See* Minn. Stat § 302A.011 Subd 2a; ITRG Bylaws, Article VI, Section 2. However, even if the certificate had been issued, it would have contained a restrictive legend that it could not be pledged without complying with the rights of first refusal in the Stock Purchase Agreement.

11. If the estate is a shareholder, then Cornerstone Bank does not have a perfected interest in investment property. Chrysler and Toyota would not have a lien because the certificate would have carried the legend that it could not be encumbered which defeats a blanket security interest in certificated stock. *See* Minn. Stat. §302A.429, Subd. 2.

12. If the estate is not a shareholder, it would have succeeded to whatever contractual

rights Hecker had under the Stock Purchase Agreement. These rights could be contract rights or general intangibles and therefore fall under the security interest of all three lenders. But as contractual rights, these lenders get whatever rights Debtor had – the right to stock with a legend restricting encumbering the stock and prohibiting such encumbrance without first affording the right of first refusal. The right of first refusal was not provided and, therefore, the granting of the blanket security interest was not valid, even in the contract rights.

13. If the estate is not a shareholder, it should be able to demand the delivery of the stock certificate from Buyer. Debtor could not have owned any Company stock before the certificate representing such stock was issued and registered on the books and records of the Company and thus would not have had an interest in Company stock to which the secured claims could attach. If Buyer delivers the stock with the legend to the Trustee post-petition, the after-acquired property clauses of these lenders would be cut off by 11 U.S.C. §552.

14. The Trustee believes that any interest claimed by the three lenders is either void or voidable.

15. There exists therefore a *bona fide* dispute whether any shares of ITRG are property of the estate and over whether the three lenders have security interests in the shares. The Trustee may therefore sell the estate's interest, if any, in the shares of ITRG and the rights under the and the Stock Purchase Agreement free and clear of interests under 11 U.S.C. §363(f)(4).

16. Expedited relief is required as Buyer requires Court approval by August 28, 2009 as a condition to the purchase.

17. Pursuant to Local Rule 9013-2(c), the Trustee gives notice that he may, if necessary, testify at the hearing regarding the proposed sale.

**WHEREFORE**, the Trustee moves the Court for an order authorizing a sale of assets of the Debtor free and clear of interests and granting such other relief as the Court may deem just and equitable.

**LEONARD, O'BRIEN  
SPENCER, GALE & SAYRE, LTD.**

/e/ Matthew R. Burton

Dated: August 17, 2009

By \_\_\_\_\_  
Matthew R. Burton, #210018  
Attorneys for Randall L. Seaver, Trustee  
100 South Fifth Street, Suite 2500  
Minneapolis, Minnesota 55402  
(612) 332-1030

**VERIFICATION**

I, Randall L. Seaver, Trustee of the Bankruptcy Estate of Dennis E. Hecker, the moving party named in the foregoing Notice of Hearing and Motion for an Order Authorizing Sale of Assets Free and Clear of Liens, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: August 17, 2009

/e/ Randall L. Seaver

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Randall L. Seaver, Trustee

407463

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

BKY No. 09-50779

Dennis E. Hecker,

Chapter 7

Debtor.

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**UNSWORN CERTIFICATE OF SERVICE**

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I hereby certify that on August 17, 2009, I caused the following documents:

***Notice of Hearing and Expedited Motion for an Order Authorizing Sale of Assets  
Free and Clear of Liens***

to be filed electronically with the Clerk of Court through ECF, and that ECF will send an e-notice of the electronic filing to the following:

- Patti H Bass    ecf@bass-associates.com
- Bruce H. Carlson    bruce.carlson@mlcfargolaw.com, tricia.fossen@mlcfargolaw.com
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- Rebecca G. Sluss rsluss@oppenheimer.com
- Matthew A Swanson matthew.swanson@leonard.com, callie.sanford@leonard.com
- US Trustee ustpregion12.mn.ecf@usdoj.gov

I further certify that I caused a copy of the foregoing documents to be faxed, e-mailed and/or mailed by first class mail, postage paid, to the following:

**SEE ATTACHED SERVICE LIST**

Dated: August 17, 2009

/e/ Valerie Rittenbach

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Valerie Rittenbach  
100 South Fifth Street, Suite 2500  
Minneapolis, MN 55402  
(612) 332-1030

407513



<p><b>DENNIS E. HECKER</b> <b>SERVICE LIST</b> <b>BKY CASE NO. 09-50779</b></p> <p><b>Case Number: 09-50779</b></p> <p>Associated bank Messerli &amp; Kramer, PA 1400 Fifth Street Towers 100 South Fifth Street Minneapolis, MN 55402 UNITED STATES</p> <p>Crown Bank c/o Foley &amp; Mansfield, P.L.L.P. 250 Marquette Avenue Suite 1200 Minneapolis, MN 55401</p> <p>HSBC Bank Nevada, N.A. Bass &amp; Associates, P.C. 3936 E. Ft. Lowell Rd., Suite 200 Tucson, AZ 85712</p> <p>Hyundai Capital America 400 Flagship Corporate Center 775 Prairie Center Drive Eden Prairie, MN 55344</p> <p>LEONARD OBRIEN SPENCER GALE &amp; SAYRE LTD 100 SOUTH 5TH STREET SUITE 2500 MINNEAPOLIS, MN 55376</p> <p>Midwest Motors, LLC Mackall, Crounse &amp; Moore c/o William O'Brien 1400 AT&amp;T Tower 901 Marquette Ave</p>	<p>KAPLAN STRANGIS &amp; KAPLAN PA 5500 WELLS FARGO CENTER 90 SOUTH 7TH STREET MINNEAPOLIS MN 55402</p> <p>KELLY K. HECKER 13905 - 53RD AVE N. APT. 1 PLYMOUTH MN 55446</p> <p>KLEINBANK 14141 GLENDALE ROAD SAVAGE MN 55378</p> <p>KLOBUCAR, JEFFREY D, ESQ 250 MARQUETTE AVE STE 1200 MINNEAPOLIS MN 55401</p> <p>KSTP-FM LLC 3415 UNIVERSITY AVE SAINT PAUL MN 55114</p> <p>LAKE BANK, N.A., THE 613 FIRST AVENUE TWO HARBORS MN 55616</p> <p>LALLIER, THOMAS J FOLEY &amp; MANSFIELD 250 MARQUETTE AVE STE 1200 MINNEAPOLIS MN 55401</p> <p>LLOYD SECURITY 1097 10TH SE MINNEAPOLIS MN 55414</p> <p>LUBIC, MICHAEL, ESQ. 601 S FIGUEROA ST</p>
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VISIONBank c/o Bruce H. Carlson McNair, Larson & Carlson, Ltd. P.O. Box 2189 Fargo, ND 58108-2189	MARC E TRESSLER 3400 BARBARA LN BURNSVILLE MN 55337
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AMERICAN BANK 1060 DAKOTA DRIVE MENDOTA HEIGHTS MN 55120	MIKDEN PROPERTIES 7002 6TH STREET NORTH OAKDALE MN 55128
AMERICAN EXPRESS P. O. BOX 0001 LOS ANGELES CA 90096	MINNESOTA DEPT. OF REVENUE MAIL STATION 7701 SAINT PAUL MN 55146-7701
AMERICAN NATIONAL BANK OF MN 7638 WOIDA RD BAXTER MN 56425	MINNESOTA DEPT. OF REVENUE PO BOS 64649 SAINT PAUL MN 55164-0649
ANCHOR BANK 1570 CONCORDIA AVE SAINT PAUL MN 55104	MIRAGE 3400 LAS VEGAS BLVD LAS VEGAS NV 89109
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	US Trustee 1015 US Courthouse 300 S 4th St Minneapolis, MN 55415



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GMAC, LLC 15303 94TH AVENUE ORLAND PARK IL 60462	WATERFORD ASSOCIATION P.O. BOX 1353 MINNEAPOLIS MN 55480-1353
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HOLY CROSS ENERGY 3799 HWY 82 GLENWOOD SPRINGS CO 81602	WELLS FARGO BANK N.A. LOAN ADJUSTMENT GROUP 90 SOUTH 7TH STREET MINNEAPOLIS MN 55402
HOME FEDERAL SAVINGS BANK 1016 CIVIC CENTER DR NW STE 300 ROCHESTER MN 55903	WELLS FEDERAL BANK 53 FIRST ST. SW WELLS MN 56097
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HYUNDAI MOTOR FINANCE COMPANY 10550 TALBERT AVENUE MOUNTAIN VALLEY CA 92708	WORLD OMNI FINANCIAL CORP. 190 JIM MORAN BOULEVARD DEERFIELD BEACH FL 33442
INTER BANK P.O. BOX 986 NEWARK NJ 07184	ZAPPIA, THOMAS M., ESQ. ZAPPIA & LEVAHN 941 HILLWIND RD NE STE 301 MINNEAPOLIS MN 55432
INTERBANK EDINA 3400 WEST 66TH STREET, SUITE 100 EDINA MN 55435	Clinton E. Cutler Fredrikson & Byron, P.A. 200 South Sixth Street Ste 4000

INTERNAL REVENUE SERVICE SPECIAL PROCEDURES BRANCH 389 US COURTHOUSE 316 N ROBERT ST. PAUL MN 55101	Minneapolis, MN 55402
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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

BKY No. 09-50779

Dennis E. Hecker,

Chapter 7

Debtor.

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**ORDER AUTHORIZING EXPEDITED SALE OF ASSETS OF  
DEBTOR FREE AND CLEAR OF INTERESTS**

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The above matter came before the Court on the Motion of Randall L. Seaver, Trustee ("Trustee") seeking an order authorizing sale of assets free and clear of interests.

Based upon all the files, records and proceedings herein, and the court being fully advised in the premises,

**IT IS HEREBY ORDERED:**

1. The Notice of the sale motion and of the hearing was sufficient under the circumstances.
2. The Trustee is entitled to expedited relief.
3. The Trustee is authorized to sell to Todd A. Montpetit ("Buyer") all of the Debtor's interest in ITR Group, Inc. ("ITRG") including shares of ITRG's stock and all of the Debtor's rights under that certain Stock Purchase Agreement dated March 1, 2004 between Debtor and Buyer for the sum of \$40,000.00.
4. The property and rights sold shall be free and clear of any interest in such property pursuant to 11 U.S.C. §363(a), (b) and (f) with such interests, if any, attaching to the proceeds of sale with the same priority, dignity and effect as such interests existed pre-petition.

5. The proceeds shall be deposited in the Trustee's account and held subject to further order of the Court.

6. The Buyer has acted in good faith within the meaning of 11 U.S.C. §363(m) and is entitled to the benefits thereof.

7. Notwithstanding Fed. R. Bankr. P. 6004(g), this Order is effective immediately.

**BY THE COURT:**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Robert J. Kressel  
U.S. Bankruptcy Court Judge

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